

DAVID BOLAND, INC.

CONTRACT NO. V673C-403

VABCA-5937E, 5939E,
5940E, 5941E & 5945E

VA MEDICAL CENTER
TAMPA, FLORIDA

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Orlando, Florida, for the Appellant.

Joan S. Ratliff, Esq., Trial Attorney, Jackson, Mississippi; *Charlma J. Quarles, Esq.*, Deputy Assistant General Counsel; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE PULLARA

David Boland, Inc. (“Applicant,” “Contractor,” or “Boland”) seeks \$55,456 in attorney fees and expenses under the *Equal Access to Justice Act (EAJA)*, 5 U.S.C. § 504, following our opinion in *David Boland, Inc.*, VABCA Nos. 5937, 5931-41 & 5945, 2000 WL 33420528 (April 19, 2000), on APPELLANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT. Appellant had moved for partial summary judgment concerning ten of sixteen appeals pending before the Board. With respect to five appeals (VABCA Nos. 5937, 5939-41 and 5945) included in that MOTION, Appellant sought summary judgment on both entitlement and quantum. The Government responded to those five appeals that it did not dispute that Appellant was entitled to the amounts claimed. Accordingly, the Board granted Appellant’s MOTION in those five appeals and found Appellant entitled to judgment in the aggregate amount of \$26,507 plus interest. Appellant

subsequently filed this APPLICATION FOR AN AWARD OF ATTORNEY'S FEES AND EXPENSES (APPLICATION).

In its APPLICATION, Boland asserts (1) that it meets the eligibility requirements of EAJA with respect to its being a prevailing party, (2) that the APPLICATION is timely and (3) that it meets limitations regarding size, net worth and number of employees. The Government has not contested those assertions nor has it argued that its position was substantially justified. We find Applicant eligible for an award under EAJA.

Applicant sets forth in its APPLICATION a table summarizing all hours expended and fees charged in all sixteen appeals up to the date of the grant of summary judgment in these five appeals. Those sixteen appeals include eight appeals that eventually went to hearing on a termination for default claim and equitable adjustment claims totaling nearly \$2,000,000. The fees are set forth by attorney, date, and rate, limited to \$125 per hour, and total nearly 1,900 hours and \$246,197.86. Also tabulated are expenses totaling \$24,802.86. Applicant submits that an award of \$50,000 for attorney fees and expenses of \$5,456 would be appropriate in connection with these five appeals. Those figures were calculated by taking 22% of the total fees (limited to \$125 per hour) and expenses billed to Boland for all work expended on the sixteen consolidated appeals. Applicant asserts that given the consolidation of the numerous appeals (for discovery and hearing), and the practical inability to differentiate the effort expended on the various appeals, such an approach is logical and reasonable. The Government responds that the fees being requested are not substantiated and are unreasonable. The Government disagrees with the 22% figure used by Applicant, arguing that the \$26,507 it paid represented only approximately 1% of the value of Boland's total claims.

As the Government suggests, the Board is entitled to examine the fees and expenses claimed and, in its discretion, determine a reasonable award. *Penn Environmental Controls, Inc.*, VABCA No. 3726E, 98-1 BCA ¶ 29,355; *Buckley Roofing Co., Inc.*, VABCA No. 3347E, 92-2 BCA ¶ 24,826. In this case, Appellant's focus, in large part, was on proving that it was entitled to a lengthy time extension, mostly on the basis of certain differing site conditions, and, perhaps more importantly, in an effort to obtain the reversal of the termination for default. Much effort was expended dealing with experts on technical issues unrelated to these five appeals.

As Appellant argues, the Government denied but never seriously contested these five appeals in any meaningful way. These five appeals were swept along with the other consolidated appeals for purposes of filing the Notice of Appeal, the Complaint and the Rule 4 Appeal File Supplement, and for conducting discovery. Even the filing of the MOTION FOR SUMMARY JUDGMENT intertwined these five appeals with five other appeals. There is little, if any, evidence of particular billed hours relating to these specific appeals. Based on our review of the billings and the considerations above, and exercising the broad discretion accorded us in such matters, we hereby allocate to these five appeals 20 hours of attorney fees at \$125 per hour, or a total of \$2,500, and \$250 for expenses, for a total award of \$2,750.

DECISION

Applicant is entitled to an EAJA award of \$2,750 in connection with the captioned appeals.

Date: August 30, 2001

MORRIS PULLARA, JR.
Administrative Judge
Panel Chairman

We Concur:

JAMES K. ROBINSON
Administrative Judge

RICHARD W. KREMPASKY
Administrative Judge